

REMARKS

This Preliminary Amendment is filed in response to the FINAL Office Action mailed on February 10, 2003 in the parent U. S. Patent Application Serial No. 09/213,578, and in the Advisory Action mailed on July 18, 2003, and in the present Continuation Application which names U.S. Patent Application Serial No. 09/213,578 filed on December 17, 1998 as its parent application. All objections and rejections are respectfully traversed.

Claims 1-40 are in the Application.

The claims from the parent application U.S. Patent Application Serial No. 09/213,578 filed on December 17, 1998, as most recently pending in the parent application, were re-numbered into a more logical order. Some of the claims were amended to better claim the invention.

The claims are attached, beginning at page 55, to a copy of the Application as filed. A new Abstract is filed on the page following the claims.

At paragraphs 2-3 of the FINAL Office Action mailed on February 10, 2003 in the parent application, all claims were rejected under 35 U.S.C. 103(a) as being unpatent-

able over U. S. Patent No. 6,400,681 issued to Bertin et al. on June 4, 2002 (hereinafter Bertin). This rejection was repeated in the Advisory Action mailed on July 18, 2003.

Applicant respectfully urges that 35 U.S.C. 103(c) applies to the present Continuation Applicant as the Continuation was filed after November 29, 1999.

Applicant respectfully urges that Bertin is precluded under 35 U.S.C. 103(c) from serving as a reference under 35 U.S.C. 103(a) against the present Application for U. S. Patent.

Bertin and the present invention were both owned by IBM Corporation, New Orchard Road, Armonk, New York, at the time that the invention was made.

The statute 35 U.S.C. 103(c) states as follows:

“Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.”

The present application was assigned to IBM Corporation, New Orchard Road, Armonk, New York, by Assignment recorded at Reel/Frame 9802 / 0750 on February 26, 1999.

Bertin was assigned to IBM Corporation, New Orchard Road, Armonk, New York, by Assignment recorded at Reel/Frame 8759 / 0515 on October 6, 1997.

Filing Date of Parent Application: December 17, 1998.

Filing date of the present Continuation Application: August 4, 2003.

Filing date of Bertin, Bertin: April 1, 1997 .

Issue date of Bertin, Bertin: June 4, 2002.

Analysis with respect to sections of 35 U.S.C. § 102

A person shall be entitled to a patent unless--

102(a) “the invention . . . was patented . . . in this . . . country . . . before the invention thereof by the applicant”

Analysis: BERTIN does not qualify as prior art under 102(a) because the invention was invented by Applicant before patenting by BERTIN, as Applicant’s parent application filing date precedes issue of BERTIN’s patent.

102(b) “the invention was patented . . . more than one year prior to the date of the application for patent in the United States”

Analysis: BERTIN does not qualify as prior art under 102(b) because Applicant’s parent application was filed before patenting by BERTIN.

102(c) “he has abandoned the invention”

Analysis: BERTIN does not qualify as prior art under 102(c) because Applicant has not abandoned the present invention.

102(d) “the invention was first patented or caused to be patented . . . in a foreign country prior to the date of the application for patent in this country on an application for patent . . . filed more than twelve months before the filing of the application in the United States”

Analysis: BERTIN does not qualify as prior art under 102(d) because the present invention was not patented in a foreign country before filing in the United States.

Accordingly, Applicant respectfully urges that BERTIN qualifies as prior art only under 35 U.S.C. 102(e), 102(f), or 102(g), and therefore is legally precluded from serving as a reference under 35 U.S.C. 103(a) by operation of 35 U.S.C. 103(c).

All independent claims are believed to be in condition for allowance.

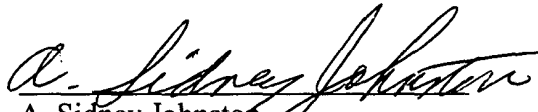
All dependent claims are believed to be dependent from allowable independent claims, and therefore in condition for allowance.

Favorable action is respectfully solicited.

Please charge any additional fee occasioned by this paper to our Deposit Account

No. 03-1237.

Respectfully submitted,


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